

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WILLIAM SCHEIDLER,

Appellant,

v.

KITSAP COUNTY ASSESSOR,

Respondent.

No. 38781-6-II

UNPUBLISHED OPINION

Penoyar, J. — William Scheidler sought injunctive and declaratory relief against the Kitsap County Tax Assessor for alleged constitutional violations and misapplication of state law. The trial court granted the Assessor’s motion to dismiss and Scheidler now appeals, arguing that the trial court erred in dismissing his case because a justiciable controversy exists, and that he need not exhaust any administrative remedies before bringing his claim. We affirm.

FACTS

RCW 84.36.381 provides that senior citizens, disabled persons, and veterans with a 100 percent service-connected disability, who meet certain income requirements, shall receive a property tax exemption based on their disposable income. To obtain a property tax exemption, an individual must submit an application to the county assessor’s office with supporting documents. WAC 458-16A-135(3).

On November 20, 2008, Scheidler filed a pro se complaint against the Assessor seeking injunctive and declaratory relief.¹ Specifically, he challenged the application form, alleging that it used a method of calculating disposable income inconsistent with Washington law. Scheidler also

¹ Counsel represents Scheidler on appeal.

raised other claims not renewed on appeal. He did not file an application with the Assessor for an exemption.

On December 3, 2008, Scheidler filed a motion for a preliminary injunction. On December 11, 2008, the Assessor filed a CR 12(b) motion to dismiss. The trial court found that the matter was not yet ripe for controversy, that Scheidler failed to exhaust available administrative remedies, and that Scheidler failed to name the State of Washington as a party. On this basis, the trial court granted the Assessor's motion to dismiss. The court also awarded the Assessor \$250 in statutory costs pursuant to chapter 4.84 RCW, consisting of \$200 in statutory attorney fees and \$50 in disbursements.

On January 9, 2009, Scheidler filed a motion for reconsideration, which the trial court denied. Scheidler appeals.

ANALYSIS

I. Motion to Dismiss

A. Standard of Review

We review de novo the dismissal of a claim under CR 12(b)(6). *Reid v. Pierce County*, 136 Wn.2d 195, 200-01, 961 P.2d 333 (1998). Dismissal is only appropriate if the complaint alleges no facts that would justify recovery. *Reid*, 136 Wn.2d at 200-01. We accept as true the allegations in a plaintiff's complaint and any reasonable inferences therein. *Reid*, 136 Wn.2d at 201.

B. Justiciable Controversy

Scheidler has not presented a justiciable controversy involving him personally. Here, he did not apply for a property tax exemption, so there is no actual, present, and existing dispute,

and his interests are only potential or theoretical. Therefore, Scheidler's case is not justiciable and dismissal of his claim was appropriate. *See Branson v. Port of Seattle*, 152 Wn.2d 862, 877, 101 P.3d 67 (2004); *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004); *S. Tacoma Way, LLC v. State*, 146 Wn. App. 639, 648, 191 P.3d 938 (2008), *review granted*, 165 Wn.2d 1036, 205 P.3d 131 (2009).

Even when no justiciable controversy exists, the court may hear a declaratory judgment action in those rare instances "where the interest of the public in the resolution of the issue is overwhelming" and where the issue has been adequately briefed and argued. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 416, 27 P.3d 1149 (2001) (quoting *In re Disciplinary Proceeding against Dering*, 108 Wn.2d 82, 122-23, 736 P.2d 639, 744 P.2d 340 (1987)). Issues of major public importance have included matters directly affecting the freedom of choice in the election process and the constitutionality of a statute increasing the amount of excise tax. *Wash. State Coal. for the Homeless v. Dep't of Soc. and Health Servs.*, 133 Wn.2d 894, 917, 949 P.2d 1291 (1997). The allegation that the instructions on the Assessor's tax exemption application form are inconsistent with Washington law is not an issue of "broad overriding public import." *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 814, 514 P.2d 137 (1973).

C. Exhaustion of Administrative Remedies

Even if Scheidler could demonstrate that a justiciable controversy exists, he had administrative remedies available that he did not exhaust before going to court. *See, e.g.*, RCW 84.08.130, RCW 84.36.385(5), RCW 84.48.010; WAC 456-09-010; WAC 458-16A-140(6). In general, if an adequate administrative remedy is available, it must be pursued before the courts will intervene. *Wright v. Woodard*, 83 Wn.2d 378, 381, 518 P.2d 718 (1974). Scheidler's

reliance on *Hartman v. Washington State Game Commission*, 85 Wn.2d 176, 532 P.2d 614 (1975), is misplaced. There, the fishermen had a state-licensed right to fish that was limited by the regulation in question and had no administrative remedies. *See Hartman*, 85 Wn.2d at 177, 181-82. Scheidler alleges no loss of right and does have administrative remedies. Until he has exhausted those administrative remedies, the courts will not intervene.

II. Costs

Scheidler argues that we should reverse the trial court's award of costs under chapter 4.84 RCW if we reverse the trial court's order. Because we affirm the trial court's dismissal of Scheidler's case, we affirm the award.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Van Deren, C.J.

Houghton, J.